



Appeal Decision

Site visit made on 22 February 2022

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 May 2022

Appeal Ref: APP/K5600/W/21/3281734

Logan House, 1 Logan Place, London, W8 6QN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Logan House Freehold Limited against the decision of Royal Borough of Kensington and Chelsea.
 - The application Ref PA/21/00611, dated 29 January 2021, was refused by notice dated 18 March 2021.
 - The development proposed is Application for Prior Approval pursuant to Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the erection of two storey extension to provide four additional self-contained residential units including strengthening of existing walls and foundations, extension of stair and lift core and provision of cycle and refuse storage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Class A of Part 20, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (Class A) (the GPDO) permits construction of up to two additional storeys of new dwellinghouses immediately above the existing topmost storey on a building which is a purpose-built, detached block of flats.
3. For development to be permitted by Class A, it must satisfy limitations set out at paragraph A.1, and conditions at paragraph A.2. These conditions establish a requirement for developers to apply to the Local Planning Authority for a determination as to whether prior approval will be required in relation to a number of specified prior approval matters. In determining such an application, paragraph B(15) requires the local planning authority to take into account any representations made to them as a result of consultation, and to have regard to the National Planning Policy Framework (Framework), so far as relevant to the subject matter of the prior approval, as if the application were a planning application. I have considered the appeal on the same basis.
4. Where an application is made for a determination as to whether prior approval is required for development, paragraph B(3) provides that the local planning authority may refuse the application where it considers the proposed development does not comply with, or the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions, limitations or restrictions specified in this Part as being applicable to the development in question.

5. The Council contends that the development would fail to accord with the provisions of Class A and A.1(c) of the GPDO in that it has not been demonstrated that the building is a detached block of flats, relates to work built after 5th March 2018 and would result in unreasonable engineering operations. In addition, Paragraph A.2. sets out that developers must apply for prior approval as to a range of matters. The Council refused to grant approval in respect of matters relating to external appearance of the building and loss of amenity to neighbouring premises.
6. In addition, the Council's grounds for refusing the application includes reference to unacceptable transport and highways impacts, in the absence of a completed legal agreement to control the acquisition of parking permits. The appeal has been accompanied by an agreed Unilateral Undertaking (UU) that would prevent future residents from obtaining permits. Although there is no longer dispute between the main parties on this issue, I will nevertheless address transport and highways matters insofar as they relate to concerns raised by third parties.
7. The appellant has submitted additional information¹ following the submission of its statement of case. This relates to an appeal decision that is relevant insofar as it relates to whether the scheme is permitted development or not. Accordingly, I have accepted it as late evidence and given the Council an opportunity to provide comments.

Main Issues

8. The main issues in this appeal are:
 - Whether or not the proposal would constitute permitted development under Schedule 2, Part 20, Class A and A.1 of the GPDO;
 - if permitted development, whether prior approval should be granted having regard to the effect of the proposal on:
 - the external appearance of the building;
 - the amenity impacts of the development on existing and neighbouring premises, with particular regard to light, privacy and outlook; and
 - the transport and highways impacts of the development having particular regard to local parking conditions.

Reasons

Whether or not the proposal would be permitted development

9. Paragraph A to Class A of the GPDO sets out as permitted development, "Development consisting of works for the construction of up to two additional storeys of new dwellinghouses immediately above the existing topmost residential storey on a building which is a purpose-built, detached block of flats" together with related works. Paragraph A.(a) allows for any engineering operations reasonably necessary to construct the additional storeys and new dwellinghouses.

¹ Appeal Decision Ref: APP/U5930/W/21/3271846, allowed 4th February 2022

10. In the GPDO's Interpretation of Part 20, Paragraph C.(2) states that *"references to a storey do not include...(b) any accommodation within the roof of a building, whether comprising part of the original building or created by a subsequent addition or alteration..."*. Furthermore, Paragraph Class A.1(c) states that development is not permitted by Class A if the building was constructed before 1st July 1948, or after 5th March 2018.
11. The appeal building was originally constructed in 2016 and comprised basement, ground, first and second floors. A further storey of residential accommodation was approved in 2019² in the form of a mansard roof, which has been built and implemented. Given that Class A does not specify that the building as constructed must include any subsequent additions present at the time of the application, I have interpreted that the original construction date is the relevant date to consider in this instance. On this basis, the appeal building would fall within the permitted timeframe referred to in Paragraph A.1(c).
12. The proposal would involve the removal of the existing mansard roof, followed by the construction of an additional storey of accommodation above the existing second floor. The mansard roof would then be re-built above that new storey of accommodation. Further works would include the strengthening of the perimeter walls of the building to take the additional structural load.
13. Having regard to the interpretation provided by Paragraph C.(2) of Part 20 insofar as it relates to accommodation within the roof of a building, the existing topmost residential storey of the building would be the second floor of the block of flats. Accordingly, an additional storey comprising residential accommodation immediately above it, followed by the reconstructed mansard roof on top would be permitted development under the terms of Class A. Moreover, the strengthening of the building's perimeter walls would support the additional weight of the new storey and amount to reasonably necessary engineering operations for the purposes of Paragraph A.(a) of Class A.
14. The Council refers to a dismissed appeal³ for the construction of two additional storeys of new dwellinghouses under Class AA⁴. In that case the Inspector considered the topmost storey of the building to be its roof within which there was existing accommodation. He did not refer to the interpretation of the Class AA which distinguishes at Paragraph AA4.(2) that a 'storey' does not include accommodation within the roof of the dwellinghouse. The Inspector therefore took a different approach in determining that appeal, and I have given that case limited weight.
15. Therefore, given that the proposal relates to additional storeys above the existing topmost storey on the building, comprises engineering operations reasonably necessary to construct additional storeys and that the appeal building was constructed in 2016, it would be permitted development insofar as it relates to those relevant parts of Class A of the GPDO.
16. For the purposes of the GPDO "detached" means that the building does not share a party wall with a neighbouring building.
17. There is no definition of what constitutes a party wall within the GPDO, however, the Ministry of Housing, Communities and Local Government's

² Local Planning Authority approval Ref PP/20/01335

³ Appeal Decision Ref App/R5510/W/20/3264423

⁴ New Dwellinghouses on detached buildings in commercial or mixed use.

Planning Portal defines a wall as a “party wall” if it stands astride the boundary of land belonging to two (or more) different owners. The dictionary definition is of a wall that divides two buildings that are joined together and belongs to both of them⁵. My understanding of those definitions is that a building does not necessarily need to be a visibly separate or standalone structure in its appearance to be considered ‘detached’, rather it’s dependent on whether a “party wall” exists.

18. The Council asserts that insufficient evidence has been submitted to demonstrate that the appeal building is a detached block of flats as set out in the GPDO. It is also concerned that aerial photographs show the appeal building adjoined to Nos 3-8 Logan Place (Nos 3-8), along with No 1 Logan Mews (No 1).
19. Although the appeal building is physically adjoined to Nos 3-8 and No 1. Those are older buildings and the appellant’s photographs clearly show that the appeal building is a more recent addition to the street’s frontage.
20. The appellant has submitted sectional drawings showing an intervening cavity between the outer walls of the appeal building and Nos 3-8 and No 1, indicating that the structures do not rely on a shared wall construction. Furthermore, there is no counter evidence of any party wall agreements between the appeal building and the adjoining structures or information that indicates a single boundary wall is relied upon for structural support. The appeal also includes an assessment and statutory declaration by a Party Wall surveyor indicating that in his expert view the appeal building does not share a party wall with one of the adjoining structures. In the absence of any expert view which challenges this I have no reason to disagree with his conclusion.
21. Having carefully considered the evidence submitted and given my understanding of the terms of the GPDO, it has been demonstrated that the appeal building is detached for the purposes of assessment against Paragraph A. of Class A. It is therefore permitted development.
22. I will now turn to the prior approval matters that are disputed between the main parties.

External appearance of the building

23. The appeal site comprises a large apartment building with accommodation over several floors, including accommodation within its mansard roof construction. It is located on the southern frontage of Logan Place, a largely residential street consisting of a variety of building types in terms of their design and scale. The appeal building, in part, adjoins and rises above No 1 Logan Mews, the end property in a uniformly designed two-storey terrace. The mews properties have a separate access off Logan Place, which has a distinctive cobbled surface. Their picturesque frontages, set back and facing away from the street, combined with their scale and the cobbled street surface, form an attractive and intimate residential enclave. Those qualities also contribute towards the significance of the Edwardes Square, Scarsdale and Abingdon Conservation Area (CA) within which Logan Mews is situated. The appeal site is located outside the CA, although adjoining its boundary.

⁵ Cambridge Dictionary definition

24. The additional storeys of accommodation would be arranged in such a way that they would be taller at the building's rear and rise away from the frontage in a stepped formation. This would result in the rear portion of the building appearing disjointed. Moreover, in the context of the street where I observed more uniformly shaped and arranged roof formations, the proposal would appear somewhat lopsided, particularly from Logan Mews and when seen through the access to that street. Consequently, it would appear as an inconsistent architectural form that would harmfully erode the townscape qualities of the immediate area.
25. The additional accommodation would extend the height of the appeal building's side elevation. This would result in a blank brick wall topped by the new mansard roof, rising significantly above the adjoining property at No 1. The combined height, mass and bland appearance of the proposed elevation, together with its immediacy to No 1, would appear jarring and harsh, resulting in an unsympathetic interface between the more modern appeal building and the picturesque mews. Moreover, this awkward juxtaposition would appear dominating from within Logan Mews and from parts of Logan Place such that it would harmfully erode its inherent charm and atmosphere along with the significance of the CA.
26. It is acknowledged that the appeal building already rises above the parapet and flank wall of No 1, although it does so more considerably in terms of its massing and height and does not display the same harsh relationship and disproportionate scale with No 1 as the proposal would.
27. The proposed additional accommodation would also extend above the adjoining four storey building at No 3-8 Logan Place. Although the height difference between the two properties would be less pronounced, while being more consistent with the variations in roof heights and parapet walls along the street.
28. The appellant suggests that the terms of Class A do not require an assessment of the proposal's impact on the broader context when considering external appearance. However, the courts have recently found in relation to Class AA developments, that the control of the external appearance of the dwellinghouse is not limited to impact on the subject property itself, but also includes impact on neighbouring premises and the locality. In my view the same logic can be applied to upward extensions at Part 20 Class A. Moreover, in the case of the appeal building's proximity to Logan Mews, the street's context is an aspect of its external appearance, and it would be inappropriate to look at any alterations under the terms of the Order in isolation.
29. In my assessment, the development would therefore fail to assimilate appropriately to its surroundings due to its prominence and poor relationship to neighbouring buildings, while failing to enhance or preserve the setting of the adjacent CA. I find the proposal would not accord with the Framework insofar as it broadly seeks well-designed places and requires, amongst other things, development that is visually attractive and sympathetic to local character, and I therefore conclude that the external appearance of the building would be unacceptable.

Amenity

30. The Council and neighbouring occupiers have raised concerns that the additional storey of accommodation would result in an unacceptable loss of daylight and sunlight entering adjacent residential properties.
31. In the limited instances where the appellant's Daylight and Sunlight Report finds a loss of light to some neighbouring rooms, the degree of the reduction in light is marginal and would not amount to significant losses of light entering those properties at Logan Place and Logan Mews. These findings, suggest to me that the effect of the proposal upon neighbouring occupier's daylight and sunlight would not be unacceptable.
32. The appeal building has a balcony and windows that face side windows and the roof terrace belonging to No 10 Logan Mews (No 10). The properties are separated by the existing access road serving the mews, which provides a degree of relief from unwanted overlooking. The proposed additional accommodation would also include a balcony and windows with a similar separation distance relative to No 10, albeit at a higher level. Future occupiers would be able to look across to No 10, however, those views would be more angled rather than direct due to the orientation of the new windows / balcony. Therefore, there would be no material changes that would result in any unacceptable overlooking of private spaces relating to neighbouring properties.
33. The additional accommodation has been marginally stepped away from the side of the appeal building. It would not be clearly viewed from within neighbouring properties and gardens (particularly No 10 Logan Mews), given the angle of exposure to the structure. Similarly, it would not appear dominant from those neighbouring spaces given the separation distance that would be maintained. As such there would be no unacceptable loss of outlook.
34. For the above reasons, having particular regard to light, privacy and outlook, the amenity impacts of the development on existing and neighbouring premises would be acceptable.

Transport and highways

35. The completed legal agreement accompanying the appeal, places a restriction on future occupiers of the proposed development from obtaining parking permits. Such agreements are considered the only lawful and enforceable means of restricting access to parking permits, given that they need to control activities outside the development site, which is not something that a planning condition can achieve.
36. Accordingly, I am satisfied that this will provide an adequate means of controlling parking in the area and encourage occupiers of the flats to use non-car related modes of transport, such as cycling walking and the use of public transport. The agreed and completed UU therefore overcomes the Council's concerns on this main issue.
37. Concerns have been raised by local residents that the proposal would exacerbate parking stress in the locality and lead to a further shortage of space availability. However, the site is within a controlled parking zone (CPZ)⁶ and the submitted UU would prevent future residents from obtaining permits to

⁶ The CPZ allows resident permit holders to park Mon – Fri – 8.30 -10pm and Saturday 8.30 – 1.30pm

park in this area. Even if those spaces were occupied during the times when the CPZ restrictions are relaxed, the submitted parking survey data indicates there would be sufficient parking space availability to cater for the small number of future occupiers residing within the proposed apartments.

38. Therefore, having particular regard to local parking conditions the transport and highways impacts of the development would be acceptable.

Other Matters

39. Paragraph 199 of the Framework advises that when considering the impact of development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. It goes on to advise that significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. Given my findings above, I find the harm to the CA's significance to be less than substantial in this instance but nevertheless of considerable importance and weight. Under such circumstances, paragraph 202 of the Framework advises that this harm should be weighed against the public benefits of the proposal.
40. I acknowledge that the development would bring 4 additional dwelling units in a sustainable location, result in some additional spending in the area and add to the local housing stock. These benefits attract modest weight as a public benefit. However, they would not outweigh the harm identified above to the significance of the CA, the conservation of which the Framework indicates that great weight should be given.

Conclusion

41. I have found that the proposal would meet the permitted development requirements of Paragraph A and A.1 of Class A of Part 20 of the GPDO. In addition, it would have acceptable impacts on matters of neighbouring amenity and highways and transport. Notwithstanding this, the proposal would have an unacceptable impact on the appearance of the building and therefore fail to comply with Condition A.2.(1)(e) of Class A, Part 20 of the GPDO. For these reasons, and having regard to other matters, I conclude that the appeal should be dismissed.

RE Jones

INSPECTOR